



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB3545

Introduced 2/23/2005, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1109
35 ILCS 120/5f

from Ch. 120, par. 11-1109
from Ch. 120, par. 444f

Amends the Illinois Income Tax Act. Authorizes the Department of Revenue to seek a conditional judgment against a taxpayer's employer if the employer is served with a levy on the taxpayer's salary, wages, commissions, and bonuses by the Department and the employer fails to answer the levy. Authorizes the Department to seek a confirmation of the conditional judgment. Amends the Retailers' Occupation Tax Act. Authorizes the Department of Revenue to seek a conditional judgment against a financial institution or other person that is served with a levy by the Department of Revenue and fails to answer the levy. Authorizes the Department of Revenue to seek a confirmation of the conditional judgment. Effective July 1, 2005.

LRB094 03898 MKM 33910 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning taxes.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1109 as follows:

6 (35 ILCS 5/1109) (from Ch. 120, par. 11-1109)

7 Sec. 1109. Demand and Seizure. In addition to any other
8 remedy provided for by the laws of this State, if the tax
9 imposed by this Act is not paid within the time required by
10 this Act, the Department, or some person designated by it, may
11 cause a demand to be made on the taxpayer for the payment
12 thereof. If such tax remains unpaid for 10 days after such
13 demand has been made and no proceedings have been taken to
14 review the same, the Department may issue a warrant directed to
15 any sheriff or other person authorized to serve process,
16 commanding the sheriff or other person to levy upon the
17 property and rights to property (whether real or personal,
18 tangible or intangible) of the taxpayer, without exemption,
19 found within his jurisdiction, for the payment of the amount
20 thereof with the added penalties, interest and the cost of
21 executing the warrant. The term "levy" includes the power of
22 distraint and seizure by any means. In any case in which the
23 warrant to levy has been issued, the sheriff or other person to
24 whom the warrant was directed may seize and sell such property
25 or rights to property. Such warrant shall be returned to the
26 Department together with the money collected by virtue thereof
27 within the time therein specified, which shall not be less than
28 20 nor more than 90 days from the date of the warrant. The
29 sheriff or other person to whom such warrant is directed shall
30 proceed in the same manner as prescribed by law in respect to
31 the enforcement against property upon judgments by a court, and
32 shall be entitled to the same fees for his services in

1 executing the warrant, to be collected in the same manner. The
2 Department, or some officer, employee or agent designated by
3 it, is hereby authorized to bid for and purchase any property
4 sold under the provisions hereof. No proceedings for a levy
5 under this Section shall be commenced more than 20 years after
6 the latest date for filing of the notice of lien under the
7 provisions of Section 1103, without regard to whether such
8 notice was actually filed.

9 Any officer or employee of the Department designated in
10 writing by the Director is authorized to serve process under
11 this Section to levy upon accounts or other intangible assets
12 of a taxpayer held by a financial organization, as defined in
13 Section 1501 of this Act. In addition to any other provisions
14 of this Section, any officer or employee of the Department
15 designated in writing by the Director may levy upon the
16 following property and rights to property belonging to a
17 taxpayer: contractual payments, accounts and notes receivable
18 and other evidences of debt, and interest on bonds, by serving
19 a notice of levy on the person making such payment. Levy shall
20 not be made until the Department has caused a demand to be made
21 on the taxpayer in the manner provided above. In addition to
22 any other provisions of this Section, any officer or employee
23 of the Department designated in writing by the Director, may
24 levy upon the salary, wages, commissions and bonuses of any
25 employee, including officers, employees, or elected officials
26 of the United States as authorized by Section 5520a of the
27 Government Organization and Employees Act (5 U.S.C. 5520a), but
28 not upon the salary or wages of officers, employees, or elected
29 officials of any state other than this State, by serving a
30 notice of levy on the employer, as defined in Section 701(d).
31 Levy shall not be made until the Department has caused a demand
32 to be made on the employee in the manner provided above. The
33 provisions of Section 12-803 of the Code of Civil Procedure
34 relating to maximum compensation subject to collection under
35 wage deduction orders shall apply to all levies made upon
36 compensation under this Section. To the extent of the amount

1 due on the levy, the employer or other person making payments
2 to the taxpayer shall hold any non-exempt wages or other
3 payments due or which subsequently come due. The levy or
4 balance due thereon is a lien on wages or other payments due at
5 the time of the service of the notice of levy, and such lien
6 shall continue as to subsequent earnings and other payments
7 until the total amount due upon the levy is paid, except that
8 such lien on subsequent earnings or other payments shall
9 terminate sooner if the employment relationship is terminated
10 or if the notice of levy is rescinded or modified. The employer
11 or other person making payments to the taxpayer shall file, on
12 or before the return dates stated in the notice of levy (which
13 shall not be more often than bimonthly) a written answer under
14 oath to interrogatories, setting forth the amount due as wages
15 or other payments to the taxpayer for the payment periods
16 ending immediately prior to the appropriate return date. A lien
17 obtained hereunder shall have priority over any subsequent lien
18 obtained pursuant to Section 12-808 of the Code of Civil
19 Procedure, except that liens for the support of a spouse or
20 dependent children shall have priority over all liens obtained
21 hereunder.

22 If a taxpayer's employer fails to answer a levy on the
23 taxpayer's salary, wages, commissions and bonuses as required
24 by this Section, the Department may seek in the circuit court a
25 conditional judgment against the employer for the amount
26 claimed under the levy in accordance with the procedures set
27 forth in Section 12-807 of the Code of Civil Procedure.
28 Following the entry of a conditional judgment, the Department
29 may seek to confirm the conditional judgment in accordance with
30 the procedures set forth in Section 12-807 of the Code of Civil
31 Procedure.

32 In any case where property or rights to property have been
33 seized by an officer of the Illinois Department of State
34 Police, or successor agency thereto, under the authority of a
35 warrant to levy issued by the Department of Revenue, the
36 Department of Revenue may take possession of and may sell such

1 property or rights to property and the Department of Revenue
2 may contract with third persons to conduct sales of such
3 property or rights to the property. In the conduct of such
4 sales, the Department of Revenue shall proceed in the same
5 manner as is prescribed by law for proceeding against property
6 to enforce judgments which are entered by a circuit court of
7 this State. If, in the Department of Revenue's opinion, no
8 offer to purchase at such sale is acceptable and the State's
9 interest would be better served by retaining the property for
10 sale at a later date, then the Department may decline to accept
11 any bid and may retain the property for sale at a later date.

12 (Source: P.A. 89-399, eff. 8-20-95.)

13 Section 10. The Retailers' Occupation Tax Act is amended by
14 changing Section 5f as follows:

15 (35 ILCS 120/5f) (from Ch. 120, par. 444f)

16 Sec. 5f. In addition to any other remedy provided for by
17 the laws of this State, if the tax imposed by this Act is not
18 paid within the time required by this Act, the Department, or
19 some person designated by it, may cause a demand to be made on
20 the taxpayer for the payment of the tax. If the tax remains
21 unpaid for 10 days after demand has been made and no
22 proceedings have been taken for review, the Department may
23 issue a warrant directed to the sheriff of any county of the
24 State or to any State officer authorized to serve process,
25 commanding the sheriff or other officer to levy upon property
26 and rights to property (whether real or personal, tangible or
27 intangible) of the taxpayer, without exemption, found within
28 his or her jurisdiction, for the payment of the amount of
29 unpaid tax with the added penalties, interest and the cost of
30 executing the warrant. The term "levy" includes the power of
31 distraint and seizure by any means. In any case in which the
32 warrant to levy has been issued, the sheriff or other person to
33 whom the warrant was directed may seize and sell such property
34 or rights to property. Such warrant shall be returned to the

1 Department together with the money collected by virtue of the
2 warrant within the time specified in the warrant, which may not
3 be less than 20 nor more than 90 days from the date of the
4 warrant. The sheriff or other officer to whom such warrant is
5 directed shall proceed in the same manner as is prescribed by
6 law for proceeding against property to enforce judgments which
7 are entered by a circuit court of this State, and is entitled
8 to the same fees for his or her services in executing the
9 warrant, to be collected in the same manner. The Department, or
10 some officer, employee or agent designated by it, may bid for
11 and purchase any such property sold.

12 No proceedings for a levy under this Section may be
13 commenced more than 20 years after the latest date for filing
14 of the notice of lien under Section 5b of this Act, without
15 regard to whether such notice was actually filed.

16 Any officer or employee of the Department designated in
17 writing by the Director is authorized to serve process under
18 this Section to levy upon accounts or other intangible assets
19 of a taxpayer held by a financial organization, as defined by
20 Section 1501 of the Illinois Income Tax Act. In addition to any
21 other provisions of this Section, any officer or employee of
22 the Department designated in writing by the Director may levy
23 upon the following property and rights to property belonging to
24 a taxpayer: contractual payments, accounts and notes
25 receivable and other evidences of debt, and interest on bonds,
26 by serving a notice of levy on the person making such payment.
27 Levy shall not be made until the Department has caused a demand
28 to be made on the taxpayer in the manner provided above. In
29 addition to any other provisions of this Section, any officer
30 or employee of the Department designated in writing by the
31 Director, may levy upon the salary, wages, commissions and
32 bonuses of any employee, including officers, employees, or
33 elected officials of the United States as authorized by Section
34 5520a of the Government Organization and Employees Act (5
35 U.S.C. 5520a), but not upon the salary or wages of officers,
36 employees, or elected officials of any state other than this

1 State, by serving a notice of levy on the employer. Levy shall
2 not be made until the Department has caused a demand to be made
3 on the employee in the manner provided above. The provisions of
4 Section 12-803 of the Code of Civil Procedure relating to
5 maximum compensation subject to collection under wage
6 deduction orders shall apply to all levies made upon
7 compensation under this Section. To the extent of the amount
8 due on the levy, the employer or other person making payments
9 to the taxpayer shall hold any non-exempt wages or other
10 payments due or which subsequently come due. The levy or
11 balance due thereon is a lien on wages or other payments due at
12 the time of the service of the notice of levy, and such lien
13 shall continue as to subsequent earnings and other payments
14 until the total amount due upon the levy is paid, except that
15 such lien on subsequent earnings or other payments shall
16 terminate sooner if the employment relationship is terminated
17 or if the notice of levy is rescinded or modified. The employer
18 or other person making payments to the taxpayer shall file, on
19 or before the return dates stated in the notice of levy (which
20 shall not be more often than bimonthly) a written answer under
21 oath to interrogatories, setting forth the amount due as wages
22 or other payments to the taxpayer for the payment periods
23 ending immediately prior to the appropriate return date. A lien
24 obtained hereunder shall have priority over any subsequent lien
25 obtained pursuant to Section 12-808 of the Code of Civil
26 Procedure, except that liens for the support of a spouse or
27 dependent children shall have priority over all liens obtained
28 hereunder.

29 If a financial institution or other person served with a
30 levy by the department fails to answer as required by this
31 Section, the Department may seek in the circuit court a
32 conditional judgment against that financial institution or
33 other person for the amount claimed under the levy in
34 accordance with the procedures set forth in Section 12-706 of
35 the Code of Civil Procedure. Following the entry of a
36 conditional judgment, the Department may seek to confirm the

1 conditional judgment in accordance with the procedures set
2 forth in Section 12-706.

3 In any case where property or rights to property have been
4 seized by an officer of the Illinois Department of Law
5 Enforcement, or successor agency thereto, under the authority
6 of a warrant to levy issued by the Department of Revenue, the
7 Department of Revenue may take possession of and may sell such
8 property or rights to property and the Department of Revenue
9 may contract with third persons to conduct sales of such
10 property or rights to the property. In the conduct of such
11 sales, the Department of Revenue shall proceed in the same
12 manner as is prescribed by law for proceeding against property
13 to enforce judgments which are entered by a circuit court of
14 this State. If, in the Department's opinion, no offer to
15 purchase at such sale is acceptable and the State's interest
16 would be better served by retaining the property for sale at a
17 later date, then the Department may decline to accept any bid
18 and may retain the property for sale at a later date.

19 (Source: P.A. 89-399, eff. 8-20-95.)

20 Section 99. Effective date. This Act takes effect July 1,
21 2005.